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No. 85-74

In The

Supreme Court of the United States

October Term, 1985

JULIA ELIZA GRIFFIN,

Petitioner,

v.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS; DANIEL J. RYAN, Individually and in his former capacity as Director of Public Works; FRANK M. O'DONNELL, Individually and in his former capacity as Chief of the Division of Harbors and Rivers; HENRY ISE, Individually and in his former capacity as Chief of the Division of Harbors and Rivers; EDWARD C. HAYES, JR., Individually and in his former capacity as Director of the Department of Natural Resources; DENNIS J. MURPHY, JR., Individually and in his former capacity as Director of the Department of Natural Resources; WILLIAM W. HARSH, Individually and in his former capacity as Director of the Department of Environmental Management; WENDALL J. FLANDERS, Individually and in his capacity as Director of Transportation; and W. EDWARD WOOD, Individually and in his capacity as Director of the Department of Environmental Management,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

A brief factual history, and the course of the proceedings leading to the granting of Respondents' Motion for Summary Judgment, were set out in Respondents' Statement of Undisputed Facts. Said statement was filed pursuant to Local Rule of the District Court, as a part of Defendants' Motion to Dismiss and/or for Judgment on the Pleadings and for Summary Judgment, and it was uncontroverted by Petitioner. It said,

> "Defendants contend that there is no genuine issue necessary to be litigated as to the following material facts.
>
> In 1946, the State of Rhode Island condemned certain property owned by plaintiff in Galilee, Town of Narragansett. Subsequent to said condemnations, plaintiff brought suit in Rhode Island Superior Court. After trial in one of the cases, plaintiff and the State entered into a comprehensive settlement by which the plaintiff conveyed all of the condemned property to the State by quit claim deed in exchange for the payment of $80,100 plus a building. In addition, as a part of said settlement, plaintiff on March 30, 1948, executed a release of all claims arising from the taking of her properties. In 1962, the State condemned a final parcel owned by the plaintiff. The pertinent factual details of the various transactions of the parties are accurately set out in the Rhode Island Supreme Court slip opinion at pages 2 through 6.
>
> Plaintiff, in 1973 and 1974, commenced two actions (which were subsequently consolidated) in Providence County Superior Court, which sought to have the Court determine that the State, by taking her properties, had violated her Fifth and Fourteenth Amendment Rights under the U.S. Constitution as well as certain rights allegedly accruing to her under the Rhode Island Constitution and Rhode Island Gen-

eral Laws. She asked that she be revested with title to the properties, that the State be required to account for all income which had flowed from its ownership of the properties, and for damages. The cases were tried before the Honorable Judge John P. Bourcier, sitting without a jury, who rendered a decision and entered a judgment on June 15, 1979. Plaintiff thereafter appealed the Superior Court decision to the Rhode Island Supreme Court.

Plaintiff then filed the federal action, herein, and the Court deferred action, pending the decision of the Rhode Island Supreme Court.

On August 4, 1983, the Rhode Island Supreme Court issued an opinion in which it ruled that "the State's appeal is sustained and Griffin's appeal is denied in its entirety."

In addition, Respondents' wish to correct certain items in Petitioner's Statement of the Case.

At page 7, Petitioner asserts that some sort of oral communication, in conference, was given to an Associate Justice of the State Supreme Court. She also claims that "as a result" the state filed a motion to dismiss. Respondents specifically deny both assertions, and suggest there is no evidence on which to base either contention.

At page 9, Petitioner continues to claim, despite the unequivocal language of her State court briefs, and the decision of the Rhode Island Supreme Court, that federal constitutional issues were not briefed nor decided. The record couldn't be any clearer that the Fifth and Fourteenth Amendment issues were both briefed and decided.

Finally, to correct the first paragraph on page 12 of the petition, the motion which led to the District Court's summary judgment was actually a renewal of the Mo-

tion originally filed in September, 1981. The earlier Motion had been stayed by Judge Boyle pending a decision by the Rhode Island Supreme Court in Petitioner's state court action. In addition, it was based not only on the res judicata argument, but also on the contentions that the Complaint failed to state a claim because it was commenced beyond the applicable statute of limitations (or because Plaintiff was guilty of laches), because Plaintiff had executed a full release as to all claims arising from the incident complained of, and because she had voluntarily, after extensive negotiations, deeded the subject properties to the State. Petition P. A-36, foot note 1.

—o—

ARGUMENT

Introduction

Petitioner seeks to rely on Rule 17.1(c) of the Rules of the Supreme Court in her request that a Writ of Certiorari issue, asserting that the First Circuit's decision, below, is "in conflict with applicable decisions of this Supreme Court". (Petition, p. 15). In response, it is submitted that the First Circuit (as did the District Court) explicitly applied the controlling Supreme Court decisions in a manner entirely consistent with their teachings.

The factual background giving rise to this action is set forth in the Rhode Island Supreme Court decision involving the same parties, at pages A-110-119 of the Petition.

The Court of Appeals Examined Rhode Island State Law Concerning Res Judicata To Reach Its Result In A Manner Entirely Consistent With This Court's Instruction in Migra

Though petitioner asserts that the Court of Appeals' decision conflicts with this Court's instruction in *Migra v. Warren City School District Board of Education*, 465 US 75, (1984) a reading of the First Circuit's decision makes evident that it faithfully adhered to *Migra* by examining and applying Rhode Island preclusion law. It discussed the principles enunciated in the three controlling Rhode Island Supreme Court cases concerning res judicata and collateral estoppel to conclude that the state court would have summarily disposed of a subsequent action of the type petitioner has sought to prosecute in federal court.

The essence of petitioner's argument is not really that the First Circuit decision conflicts with *Migra*, but rather that the First Circuit came to an incorrect conclusion regarding Rhode Island preclusion law. Petitioner appears to be arguing that the phrase "cause of action" has a narrow meaning, enunciated in the *Migra* decision, which the First Circuit did not perceive. Respondents submit that *Migra* did not attempt to distinguish between a "cause of action" or a "claim", or to define any of the several other similar terms utilized by various courts ("matters", "issues", "grounds", "demands", "claims for relief", "theories of recovery", "counts", "rights of action"), but rather admonished the federal courts to apply state law preclusion doctrines. The Court of Appeals did precisely this,

> However, appellant contends that the "cause of action" in Rhode Island and federal courts differed,

> and thus argues that res judicata does not bar her federal court action. We disagree. An analysis of the cause of action here and in the prior state proceedings clearly establishes that both are essentially the same.
>
> Petition, p. A-6.

The First Circuit's conclusion is consistent with those of all three Rhode Island Federal District Court judges. *Schiavulli v. Aubin*, 504 F. Supp. 483, 485-86 (Pettine, J., 1980); *Gonsalves v. Alpine Country Club*, 563 F.Supp 1283, 1287-88 (Selya, J., 1983); *Griffin v. State of Rhode Island*, (Boyle, J., 1984); petition, pp. A-19-24. In each case, the Court concluded that Rhode Island's application of res judicata was the conventional, modern approach utilized in the federal system.

Petitioner has now sought to recharacterize her state court action as one for the "fraudulent condemnation of her property", in an apparent attempt to distinguish it from a new cause of action pursuant to 42 USC § 1983. This new description of her state court complaint is an egregious misstatement of two 12 page complaints, each alleging that the Fifth and Fourteenth Amendments to the U.S. Constitution had been violated, that her property had not been taken, nor used, for a public purpose, and that the Rhode Island Constitution and state statutes had been violated by the State's refusal to reconvey the property. Note the First Circuit's comment on her state action p.A-3 of the petition, the R.I. Supreme Court's summary of her contentions at pp.A-122-123 of the petition, and the District Court's summary of her state court claims at pp.A-11-12 of the petition. Until the filing of the petition, herein, there had been no allegation of fraud.

Respondents suggest that this recent recharacterization of petitioner's theory of recovery is similar to that which she attempted by filing a section 1983 action in federal court after having litigated her state court actions to judgment. Petitioner apparently believes that so long as she can affix a new label to her same disagreement with the respondents, she is entitled to commence another lawsuit in either state or federal court. This is an obviously absurd proposition, for which no basis exists in Rhode Island law.

Even assuming, *arguendo,* that, the First Circuit was mistaken in its application of Rhode Island preclusion law, such is not a basis for this court's exercise of jurisdiction pursuant to a writ of certiorari. This Court has not rendered any decisions concerning Rhode Island res judicata law with which the Court of Appeals' decision might arguably be in conflict. This Court has far more important matters to address, it is submitted, than whether the lower federal courts accurately understood and applied Rhode Island preclusion law.

The Lower Court's Determination That The England Reservation Rule Did Not Apply To The Petitioner Is Entirely Consistent With This Court's Decisions

This Court established the general rule regarding reservation, when it said,

> We now explicitly hold that if a party freely and without reservation submits his federal claims for decision by the State Courts, litigates them there, then—whether or not he seeks direct review of the state decision in this Court—he has elected to forgo his right to return to the District Court.

England v. Louisiana Medical Examiners, 375 U.S. 411, 419, (1964).

Petitioner contends that she effectively reserved a right to have the federal court decide her federal claims under the *England* reservation doctrine. The First Circuit, however, held that "England is not applicable to this case." (Petition, p.A-8.) It is submitted that this determination conflicts with no decision of the Supreme Court.

Unlike the situation in *England,* the petitioner here commenced her actions in state court, alleging federal constitutional violations as well as state claims, litigated them, received an adverse decision on them, and then filed her action in federal court. Even after the final trial court decision and the filing of her appeal, she never explicitly communicated a desire to have the State Supreme Court rule on only state issues. Certainly, the Rhode Island Supreme Court was unaware of any claimed reservation. Petitioner's Notice of Appeal to the Rhode Island Supreme Court referred to all of her trial court claims, (including the federal ones), she briefed her federal claims in her appeal to the Rhode Island Supreme Court, and the Rhode Island Supreme Court decided her federal claims. Petition, pp.A-127-128)

Moreover, petitioner's putative written reservation occurred almost four years after having received an adverse decision by the state trial court, after submittal of all briefs to the Rhode Island Supreme Court, and on the eve of oral argument before it. She points to the following language, which is the second of three points raised in an Objection to the Defendants' Request That the Date For Oral Argument Be Continued.

> "2. This matter is of great importance to plaintiff as well as the defendants, and the decision of this Supreme Court also has a bearing on the suit that plaintiff has pending in the United States District Court for the District of Rhode Island. Trial in the Federal Court has been deferred, pending the decision of this Supreme Court, as this Court's decision will be a determining factor in what issues will have to be decided by the Federal Court."

This is the language upon which the Petitioner relies to contend that she had complied with the *England* requirement that a plaintiff inform the state court of his intention to return to Federal Court on his federal claims.

It is submitted that the plain language of this statement cannot reasonably be construed as notice to anyone that Petitioner wished to withdraw her federal claims from consideration by the Rhode Island Supreme Court, assuming she could do so. Rather, it implicitly conceded that the state court may decide all of the issues on which she took an appeal, but that if it doesn't, she will seek to return to federal court for a determination of those upon which the state court declined to rule. The intention of the statement was, of course, to argue against a delay in oral argument, not to request that the state court abstain from ruling on federal claims. Petitioner acknowledges that "she was not even aware of the reservation rule" (Petition, p.A-11), at the time she now contends she communicated the same to the state court.

However, even assuming that petitioner had communicated her request that the Rhode Island Supreme Court not rule on her federal claims, the "reservation" was neither timely made, nor within the rationale of *England*. *England* dealt with a situation in which a federal plain-

tiff had initially commenced an action in federal court, and was thereafter remitted to state court by operation of the federal abstention doctrine. The rationale which the *England* Court relied on, in part, in permitting the plaintiff to return to federal court after the adverse state decision was that a plaintiff who had initially and deliberately chosen the federal forum ought not to be prevented from having the primary fact finding determination on any reserved federal issues made by the federal court.

In the matter, herein, on the other hand, the plaintiff deliberately and initially chose the state court as the fact finder. It was not until six years after she commenced her state court action, apparently dissatisfied with the findings and decision of the state trial court, that she commenced her federal action.[1] The deferral by the Federal Court, to allow the Rhode Island Supreme Court to render its decision, did not result in the state court becoming the primary fact finder. That fact finding process had already occurred, several years earlier, solely as a function of plaintiff having initially chosen the state court forum and presenting both her state and federal claims to it.

That *England* only applies to situations where a plaintiff initially chose a federal forum was made explicit by this Court's decision in *Allen v. McCurry,* when it said:

> The holding in *England* depended entirely on this Court's view of the purpose of abstention in such a case: where a plaintiff *properly invokes federal-court*

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[1] As Judge Boyle correctly pointed out, a trial court decision is a final judgment for purposes of res judicata, under Rhode Island law. Petition, p.A-24-25.

> *jurisdiction in the first instance on a federal claim,* the federal court has a duty to accept that jurisdiction. (Emphasis added) *Allen v. McCurry,* 449 U.S. 90,101, footnote 17 (1980)

Other federal courts have understood *Allen* to narrow what was arguably a broad rule laid down in *England.*

> However, *Allen v. McCurry,* (citation omitted) expressly limits *England's* application to situations where the federal court's jurisdiction was initially invoked and properly preserved before initiating a second proceeding in State Court. *Redd v. Lembert,* 674 F.2d 1032, 1034 (5th Cir. 1982)

It is submitted that the petitioner's reliance on the language from *Migra,* which refers to the *England* reservation procedure, is inapposite to the proceedings here. More on point is the following language from *England.*

> "But we see no reason why a party, after unreservedly litigating his federal claims in the state courts although not required to do so, should be allowed to ignore the adverse state decision and start all over again in the District Court. Such a rule would not only countenance an unnecessary increase in the length and cost of the litigation; it would also be a potential source of friction between the state and federal judiciaries." *England* at 419.

The Court of Appeals' holding that *England* was not applicable was clearly correct, and consequently no conflict exists which might serve as the basis for an exercise of this Court's jurisdiction pursuant to Rule 17.1(c).

———o———

CONCLUSION

It is respectfully requested that the Petition be denied, and/or that a summary disposition on the merits be entered in Respondents' favor.

Respectfully submitted,

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